

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

v.

CR. No. 98-50029-02

CR. No. 99-50015-01

JOE LOUIS MENDOZA

DEFENDANTS

REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE

On December 12, 2005, Joe Louis Mendoza filed a motion for return of property (Doc. 148). The warrants at issue involving the seizure of Mendoza's property were issued and executed in 1999. Mendoza was sentenced on the federal criminal charges on August 24, 1999.

The motion for return of property was found to be time barred. Mendoza has now filed a motion seeking leave to appeal *in forma pauperis* (Doc. 174).

Pursuant to 28 U.S.C. § 1915(a)(3) an appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith. A reasonable person could not suppose this appeal would have some merit. It is clear that plaintiff's claim for the return of his property is barred by the applicable statute of limitations. I therefore recommend that the motion to proceed *in forma pauperis* on appeal be denied. The plaintiff may, of course, file a motion to appeal IFP with the Court of Appeals for the Eighth Circuit.

The parties have ten days from receipt of the report and recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may result in waiver of the right to appeal questions of fact. The parties are

reminded that objections must be both timely and specific to trigger de novo review by the district court.

Dated this 29th day of December 2006.

/s/ Beverly Stites Jones

UNITED STATES MAGISTRATE JUDGE